

SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1973.

No. 73-1696.

ANASTASSIOS STAMATAKOS,
Petitioner,

v.

HUNTER SHIPPING COMPANY, S. A.,
Respondent.

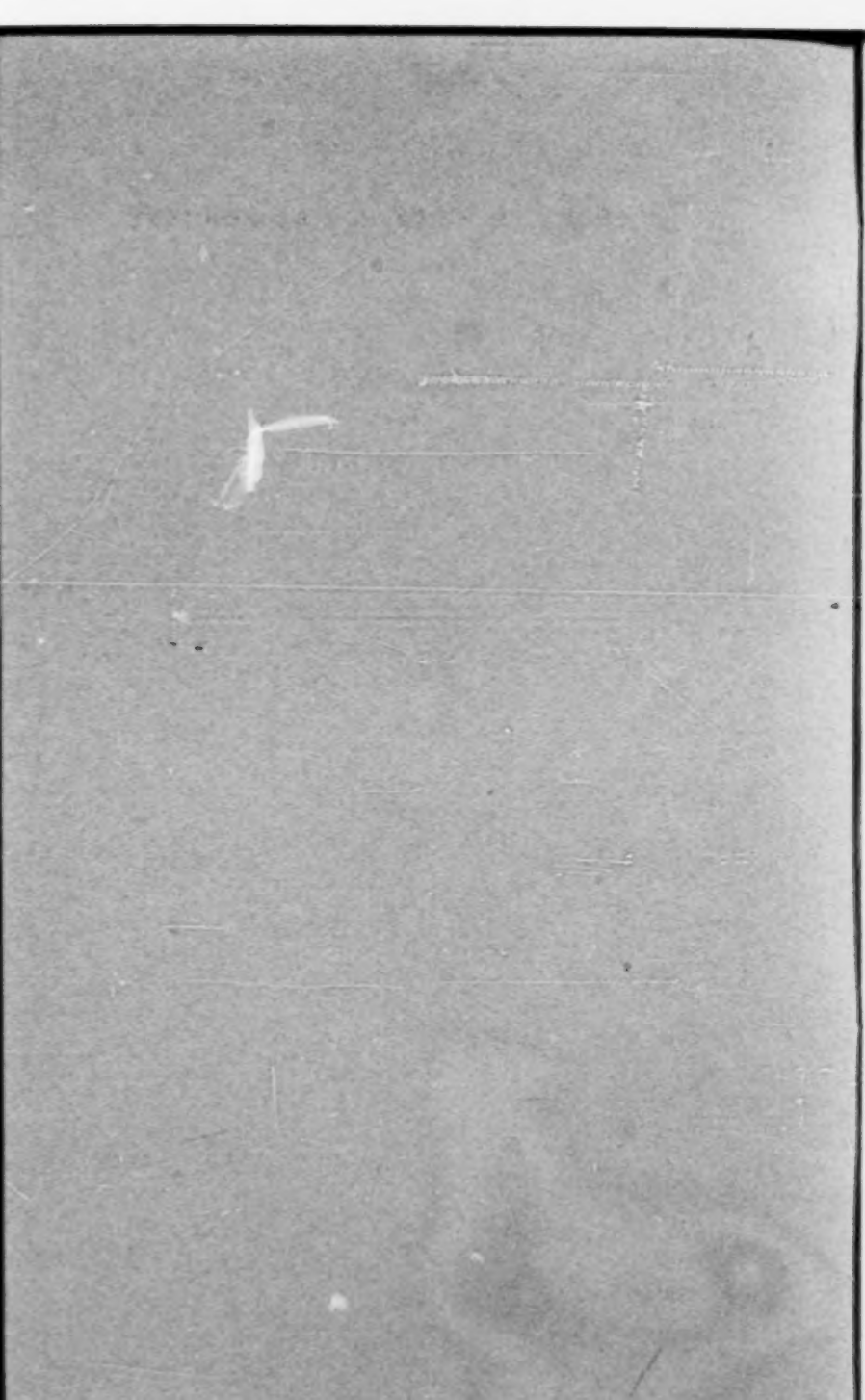
On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR RESPONDENT IN OPPOSITION.

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ANASTASSIOS STAMATAKOS,
Petitioner,

v.

HUNTER SHIPPING COMPANY, S. A.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION.

OPINIONS BELOW.

The opinion of the District Court is unofficially reported at 1972 AMC 1001. It is also printed at pages A9-A18 annexed to Petitioner's Brief. The Order of the Court of Appeals for the Third Circuit is printed herein at pages A2-A3. The Order denying appellant's Petition for a rehearing is dated February 12, 1974 and is printed at page A1.

COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW.

1. Should the Supreme Court grant certiorari to review a Court of Appeals resolution of a case where the Court of Appeals affirmed a decision by the District Court, entering a judgment in favor of petitioner in the amount of $10,000 and where there is no conflict between the decision of the Court of Appeals and the U. S. Supreme Court or between any other Circuit?

2. Should the Supreme Court grant certiorari to review a Court of Appeals' resolution of a case concerning an issue which was not presented to the Court of Appeals or the District Court?

3. Should the Supreme Court grant certiorari to review the fact that a Decision is rendered by a Circuit Court of Appeals without a Full Written Opinion?

COUNTER-STATEMENT OF THE CASE.

The facts found by the District Court and affirmed by the Court of Appeals for the Third Circuit were fully supported by the evidence.

Plaintiff is a Greek citizen, born in Greece and at the time of this incident was a citizen and resident of Greece. [FOF 20 (A12) & 29 (A13)]. He brought an action against the Greek owner of the S/T MICHAEL L, a Liberian flag merchant vessel owned by a Panamanian corporation, to recover damages arising from an accident which allegedly occurred about 8:00 p.m. on September 7, 1966, while the S/T MICHAEL L was in New York Harbor.

His theories of recovery were negligence and unseaworthiness although nowhere in his Complaint was the Jones Act or any U. S. Statute mentioned (4a-6a). He joined the crew of the vessel as Chief Steward 1:00 p.m. on September 7, 1966. At the time of the injury, plaintiff was twenty-seven years old, and had been going to sea on Greek ships since 1957, except for two years of service in the Greek Air Force (93a).

On September 7, 1966, plaintiff was taken to Bayonne Hospital where he remained until September 28, 1966 when he was repatriated to his home in Greece. He arrived in Piraeus, Greece on October 16, 1966, and the following day started receiving outpatient treatment from Dr. Tsiminakis at Athens University Hospital which continued until November 22, 1966, when he became an inpatient. He remained in the hospital for extensive neurological and psychiatric examinations and treatment under the direction of Dr. Tsiminakis and about nine other physicians until May 1967. [FOF 29 & 30 (A13)]. Virtually all diagnostic and recuperative treatment was rendered in Athens, Greece, by Greek doctors who speak only that language. Plaintiff himself spoke no English, only Greek, at the time of this incident.

Plaintiff came to this country on September 9, 1968, under a visa for which he was sponsored by his brother. [92a & FOF 31 (A13)]. His mother was a Greek citizen and his father and two other brothers are Greek citizens and residents (98a).

On July 18, 1966 plaintiff executed two documents indicating he was "affiliated with the Panhellenic Seaman's Federation", a Greek seaman's union. [105a & 106a & FOF 28 (A13)].

Plaintiff signed an employment agreement (103a & 104a) on July 19, 1966, with the Nereus Shipping Co., defendant's agent, wherein he specifically agreed to the application of Greek law. [FOF 21 & 22 (A12)].

Plaintiff was initially scheduled to be Chief Steward on the M/V FAROS, a Greek vessel, under Liberian flag, owned by a Panamanian corporation [the officers of which are the same as Hunter (FOF 24 (A12)] for which Nereus was acting as agent. [FOF 24 (A12)]. After being transported to Norfolk on the SS FRIXOS, also operated by Nereus [FOF 25 (A12)], plaintiff orally agreed to join the S/T MICHAEL L as Chief Steward. [FOF 26 (A13)]. If plaintiff had stayed on the MICHAEL L for more than the seven or eight hours he did, he would have had to sign an employment agreement specifically for the MICHAEL L and it would have been the same as the one he did sign in connection with the FAROS. [Tsakos' affidavit dated March 17, 1971 (100a & 101a)].

The officers of the defendant corporation are all citizens and residents of Greece. The stock is made to bearer and the sole stockholder is a Greek citizen, who resides in England. [FOF 8 & 9 (A11)].

When vessels operated by Nereus are operating in North America, Triton Shipping Co. acts solely as a husbanding agent pursuant to a specific sub-agency agreement

between Triton and Nereus. [FOF 12 (A11)]. Triton has never acted as a principal in relation to the MICHAEL L. [Xistris deposition p. 51 (42a)].

Nereus Shipping S. A. is a Greek corporation having its only office in Piraeus, Greece. It has no offices in the United States. [FOF 32 (A13)].

Costas Lemos was the sole shareholder of Triton in 1966 and currently resides in Lausanne, Switzerland and comes to this country "occasionally." [Xistris deposition pp. 17-18 (36a-37a)]. Mr. Lemos was a citizen of this country until 1962, when he was appointed as a representative of the Greek Government to serve on a NATO committee [Xistris deposition pp. 22 and 55 (40a and 45a)], and since then has resided in Switzerland. Furthermore, he has no stock interest in defendant Hunter. [See defendant's answer to plaintiff's No. 47 (121a & 123a)].

The MICHAEL L was built in this country under a Maritime Administration Contract, and the defendant [recognized by the U. S. Government as an alien (Transfer Order No. MAF-178 (23a)], assumed the conditions of that contract. The sole purpose of the conditions is to allow the U. S. to use an American built vessel in the event of war or a similar national emergency. [See Statutes cited in Maritime Administration Records (11a-14a)].

Babis Meliaressis did sign, on behalf of Hunter, the papers with the Maritime Administration mentioned above and engaged into the negotiations concerning the mortgage in question. However, he performed both services for Hunter pursuant to a specific resolution by the Board of Directors of Hunter (19a-21a). He was not acting as an employee of Triton when serving as attorney-in-fact for Hunter.

The time charters under which the vessel was operating [See Exhibits 8 & 9 of Xistris deposition (67a-80a)] were

signed "Triton Shipping, Inc., as agents for owners", and were with Metropolitan Petroleum Co., a Montreal Corporation. There is no requirement that the vessel call in New York or its vicinity. Clause C of the charter party dated April 29, 1963 provides: "Western Hemisphere Trading, one or two loading ports to one discharge port or one loading port to one or two discharge ports, at Charterer's option."

The issue of choice of law was submitted to the Honorable Donald W. Van Artsdalen by stipulation on November 29, 1971 (107a & A7). Both parties prepared and submitted comprehensive findings of fact and the issues involved were thoroughly briefed (A7). Nowhere in the proceedings below did plaintiff's counsel at any time urge the application of Liberian Law. Plaintiff's brief was entitled "Plaintiff's Brief in Support of Application of United States Law" and plaintiff termed the contacts with Liberia "inconsequential"—a term similarly applied to the Greek contacts.

After considering the entire record below Judge Van Artsdalen made findings of fact, wrote a comprehensive opinion and entered his Order of January 18, 1972, ruling that Greek Law be applied to this non-jury case. (A9-A18).

On March 28, 1973 the District Court entered judgment in petitioner's favor in the amount of $10,000 from which petitioner appealed for a second time. The first appeal was dismissed as premature. (A6). The second appeal was thoroughly briefed and full oral argument (30 minutes per party) was held before the Court of Appeals on January 8, 1974. The Court of Appeals on January 18, 1974 affirmed in writing the judgment of the District Court. (A2-A3).

Petitioner's Motion for Rehearing was denied on February 12, 1974, in writing, and respondent's Motion to pay funds into Court to satisfy the judgment was granted by the District Court on March 22, 1974, after which the funds were so paid.

REASONS FOR DENYING THE WRIT.

1. The Decision of the Court of Appeals Affirming the District Court's Judgment in Favor of Petitioner in the Amount of $10,000 Is Not in Conflict With This Court's Decisions or With Those of Other Circuits.

Petitioner mistakenly has suggested the Court of Appeals in affirming the District Court's opinion reached a conclusion in conflict with *Lauritzen v. Larsen,* 345 U. S. 571 (1952). Merely stating there is a conflict does not create that conflict. The most cursory glance of the district court's opinion (A13-A18) shows how painstakingly the court applied the "seven tests" of *Lauritzen* plus the "base of operations" test of *Hellenic Lines v. Rhoditis,* 398 U. S. 306 (1970). The Court in effect found in applying the disputed facts to the law, admitting "the matter appears to be extremely close", that the requisite counterweight existed to have Greek Law applied.

Petitioner argues that Liberian Law was "erroneously rejected", claiming he argued for its application "in the alternative". The plea to apply Liberian law to this case was made by plaintiff for the first time subsequent to January 18, 1972; otherwise the trial judge had no reason to state: "Plaintiff contends that the United States law and the Jones Act apply" (A9); and "Neither party contends that Liberian Law should prevail" (A14).

Counsel for respondent has studied all the pleadings in this case and nowhere prior to his brief in support of his Motion to Reconsider filed on January 26, 1972 is there any statement, direct or indirect, to show petitioner was seeking to have Liberian law applied to the facts of this case. It must be recalled that parties stipulated on November 29, 1971 that the "facts of record" as of that date "shall constitute the record upon which the Court will

make his findings of facts and conclusions of law on the choice of law issue." (107a). Petitioner did not then plead the applicability of American law and/or Liberian law as he now does. In effect, what petitioner now seeks to do is circumvent or alter the effect of the stipulation. Cf. *Andrews v. Chemical Carriers, Inc.*, 457 F. 2d 636 (C. A. 3, 1972), particularly footnote 5 on page 640.

One need only look to petitioner's own language in his enclosure letter (A19) and brief in the district court on the issue of the applicable law (A20-A24) to see that he never contended Liberian law applied:

1. Petitioner's brief concerning the choice of law issue was titled "Plaintiff's Brief in Support of Application of United States Law" (A20);

2. The entire "Introduction" of that same brief makes no mention of Liberian law (A20-A21);

3. Petitioner states in the "Introduction", "Plaintiff claims that defendant is liable to him under United States statutory and non-statutory maritime law," (although no mention of this was made in his Complaint). It is noteworthy that the and/or approach was not there used (A20);

4. On page 11 of that brief petitioner says: "The other choice of law factors which result in contacts with Liberia, Panama and Greece are *inconsequential* compared with the United States contacts." (Emphasis supplied) (A21);

5. On page 13 of that same brief petitioner states, "United States statutory and non-statutory maritime law govern this action. . . ." (Again no and/or approach) (A23), and finally;

6. On page 13 of that brief the statement is made, "The other choice of law factors which result in contacts with Liberia, Panama and Greece are *inconsequential* compared with the United States contacts." (Emphasis supplied) (A24).

Thus, as of November 29, 1971, petitioner was using the word "inconsequential" and referring to Greek and Liberian law in conjunctive terms. It is now logically inconsistent to attempt to refer to Liberian law in "and/or" terms with United States law.

In any event, as the district court found "the realities of this case are such that the 'law of the flag' should not prevail" (A15).

Courts have disregarded the flag of a vessel where it is the plaintiff seaman who seeks to look beyond the flag of convenience to the real allegiance of the corporate structure. The rationale for this is the comment in *Lauritzen* which indicates that it is common practice for American shipowners to use a foreign flag to avoid stricter American laws.

In the instant case, one must ask for whose convenience the Liberian flag is being used. From the counterstatement of facts and the court's findings of fact, it is clear no United States corporation is attempting directly or indirectly to avoid American law since no United States corporation is here involved. The flag of Liberia is flown for the convenience of a Panamanian corporation whose true allegiance is to the Kingdom of Greece.

In *Damaskinos v. Soc. Nav. Interamericana S. A.*, 255 F. Supp. 919 (S. D. N. Y. 1966), which is factually indistinguishable from the present one, except for the locus of the injury, the court in holding that Greek, not American or Liberian law should be applied where a Greek seaman was injured on a Liberian flag vessel owned by a Panamanian

corporation whose officers and shareholders were Greek and whose operations were conducted from Greece, made the following comment (at page 923):

> "If the Liberian flag of the vessel is thought to be a 'flag of convenience,' it is one for the convenience of the Greeks, not Americans. If Greek nationals choose to operate their shipping business through the medium of a Panamanian corporation whose vessels are registered in Liberia, that policy is of no concern to the United States, and it affords no reason for the application of the law of the United States to the claims of seamen on those vessels."

In *Kontos v. S. S. Sophie C*, 236 F. Supp. 664 (E. D. Pa. 1964), a case which is similarly indistinguishable from the instant case, except the locus of the injury, the trial court looked beyond the vessel's Liberian flag and held that Greek law, not American or Liberian law, applied to both the claim for damages and for maintenance and cure.

No federal question of substance has been advanced by petitioner in his first argument urging the granting of his petition. The Third Circuit by affirming the decision of the lower court, in effect adopted its reasoning. That lower court opinion correctly cited the law to be applied to the facts, i.e. *Lauritzen v. Larsen, supra;* and *Hellenic Lines v. Rhoditis, supra.* Petitioner is displeased with the outcome. However, as Mr. Justice Frankfurter so aptly stated in reviewing the findings of the Labor Board:

> "This is not the place to review a conflict of evidence nor to reverse a Court of Appeals because were we in its place, we would find the record tilting one way rather than the other, though fair-minded judges could find it tilting either way." *Labor Board v. Pittsburgh SS Co.*, 340 U. S. 498 (1950) at p. 503.

2. The Decision of the Circuit Court of Appeals Is Not in Conflict With the Treaty Between the United States and Liberia.

At the outset, it must be noted that the alleged conflict with a treaty is being raised for the first time. It was not presented either to the district court (A19-A24) or to the Third Circuit (Compare Miscellaneous Citations on A27 with Miscellaneous Citations in petitioner's present petition). It is a general rule of appellate review that only in very unusual circumstances (not here present) will the reviewing court consider for the first time issues not raised below. *Neely v. Martin K. Eby Construction Co.*, 386 U. S. 317 (1967); *Silber v. U. S.*, 370 U. S. 717 (1962); *U. S. v. Crescent Amusement Co.*, 323 U. S. 173 (1944). For this reason alone this court should not grant the petition in the instant case.

The petition should also be denied inasmuch as there is no conflict between the Liberian Treaty and the decision by the Circuit Court of Appeals. If petitioner's analysis were correct, the result would be that in every case involving a Liberian flag vessel, brought in this country, U. S. Courts would be compelled to apply Liberian law if U. S. law were ruled inapplicable. This was clearly not the intent of the seven tests advanced in *Lauritzen v. Larsen, supra.*

There are numerous instances where courts in this country, on facts similar to those in this case, have either declined jurisdiction (a result which is more harmful to a foreign litigant than that obtained in the instant case) or have applied Greek law. See *Damaskinos v. Soc. Nav. Interamericana S. A., supra; Hatzoglou v. Asturias Shipping Co., S. A.*, 193 F. Supp. 195 (S. D. N. Y. 1961); *Dassigienis v. Cosmos Carriers & Trading Corp.*, 442 F. 2d 1016 (C. A. 2, 1971); *Tamboris v. Kainis*, 439 F. 2d 1131 (C. A. 5, 1971); *Orgettas v. S/T Crinis*, 488 F. 2d 89 (C. A.

4, 1973); *Brillis v. Chandris USA, Inc.*, 215 F. Supp. 520 (S. D. N. Y. 1963); *Mihalinos v. Liberian SS Trikala*, 342 F. Supp. 1237 (S. D. Cal. 1972); and *Frangiskatos v. Konkar Maritime Enterprises, S. A.*, 471 F. 2d 714 (C. A. 2, 1972)—all cases involving Liberian flag vessels brought by Greek seamen with facts analogous to the instant case and in which the Court declined to exercise jurisdiction. Instances where jurisdiction was retained but Greek law was applied are *Kontos v. S. S. Sophie C, supra;* and *Sfiridas v. Santa Cecelia Co., S. A.*, 358 F. Supp. 108 (E. D. Pa. 1973); aff'd by the Court of Appeals for the Third Circuit by decision dated April 9, 1974.

An important factor cited by the district court and accepted by the appellate court in the present case was petitioner's acceptance of a contract by which he agreed to the applicability of Greek law and the Greek Collective Agreement in the event of "illness or injury". (FOF 21-26, A12-A13.) Similar contracts have been cited and approved by other courts as significant factors in declining jurisdiction or applying Greek law in cases brought by Greek seamen sailing on Liberian flag vessels owned and operated by foreign interests. See all cases cited above in the preceding paragraph except *Frangiskatos* and *Tamboris* in neither of which was there a statement as to the existence or non-existence of a contract.

Moreover, this Court in *MS Bremen v. Zapata Offshore Company*, 407 U. S. 1 (1972), was called upon to interpret a contract to litigate any dispute involving the contract in English Courts. Zapata brought suit in the United States and the owners of the MS BREMEN moved to dismiss for lack of jurisdiction citing among other things the contract in effect. The District Court and the Fifth Circuit held that jurisdiction should not be declined on the basis of *forum non*

conveniens and after discussing at length the policy considerations involving a contract with a specified foreign forum, the U. S. Supreme Court reversed the two lower courts. In reaching that decision, the court substantially repudiated the philosophy that foreign forum selection clauses are "contrary to public policy" and held:

> "that such clauses are *prima facie* valid and should be enforced unless enforcement is shown by the resisting party to be 'unreasonable' under the circumstances. We believe this is the correct doctrine to be followed by District Courts sitting in Admiralty."

On discussing the burden of the resisting party to show that enforcement is "unreasonable", the Court stated:

> "thus in light of present day commercial realities and expanding international trade, we conclude that the forum clause should control absent a *strong* showing it should be set aside. The correct approach would have been to enforce the forum clause specifically unless Zapata could clearly show that the enforcement would be unreasonable and unjust or that the clause was invalid for such reasons as fraud or over-reaching." (Emphasis supplied).

In another portion of the Court's decision it placed on the resisting party, Zapata, a "heavy burden" to show the foreign forum selection clause should not be enforced. See also note discussing *Bremen* case in *The Supreme Court, 1971 Term*, 86 Harv. L. Rev. 52, pp. 52-62.

In the instant case there is absolutely no evidence or even an allegation that the contract signed by plaintiff requiring that Greek Law be applied to the dispute was signed by him as a result of fraud or overreaching.

Even more significant is the fact that the Court in reaching its verdict in *Bremen* (decided since *Rhoditis*)

cites the case of *Anastasiadis v. SS Little John*, 346 F. 2d 281 (C. A. 5, 1965) to support the proposition in the first quote above. The *Anastasiadis* case involved a Greek seaman who was injured on a Liberian flag vessel, owned by a Liberian corporation which in turn was owned by an American corporation, owned and controlled by a U. S. citizen. In affirming the district court's decision to decline jurisdiction, the appellate court placed great emphasis on the fact Anastasiadis had signed an employment contract agreeing to the applicability of Greek law.

Thus, this Court in the *Bremen* case has, by implication, approved giving great weight to a contract stipulating the applicable law where there is no showing of fraud or over-reaching, neither of which is claimed here.

3. The Supreme Court Should Not Grant Certiorari Merely Because the Circuit Court of Appeals Chose to Affirm Without a Full Opinion.

Petitioner's position appears to be that the Third Circuit by its decision of January 18, 1974, violated the Due Process Clause of the Fifth Amendment by failing to render a formal opinion and further by the alleged lack of notice that it would dispose of some appeals without full opinions.

Carried to its logical extreme, adoption of petitioner's argument would require that this Court as well, render a full opinion in every case or at least provide an explanation as to why "his appeal (or petition) did not warrant a (full) written opinion". Petitioner's Brief p. 15. As a matter of fact, the number of cases in which formal decisions were rendered by this Court during the 1971 Term was 151 or less than 5 percent of the 3,645 cases given disposition during that Term. In addition, 3,190 or about 89 percent were disposed of by denial of petitions for certiorari or by dismissal of appeals. The *Supreme Court, 1971 Term*, 86 Harv. L. Rev. 52 (especially Table II at p. 303).

That table also shows that petitions for certiorari and/or appeals were granted in 8.5 percent of the cases on the Appellate Docket and 1.7 percent on the Miscellaneous Docket.

Given the great increase in cases coming before this Court, the requirement of a full opinion or even an explanation as to why no full opinion was written in each case would totally stagnate the disposition of cases. That the same result would occur in the Circuit Courts is evidenced by the remarks of Chief Justice Burger at the Semiannual Meeting of the U. S. Judicial Conference on March 7-8, 1974:

> "The startling increase in cases flooding into the federal appeals courts shows no sign of abating. Rather, the increase goes on. Filings in federal appeals courts have risen another 11 percent during the first six months of this fiscal year. This is imposing immense burdens on the federal judges as they attempt to keep abreast of the demands of justice."

Traditionally due process has required that a person not be deprived of life, liberty or property without a fair hearing, "one before a tribunal which meets at least the currently prevailing standards of impartiality". *Wong Yang Sung v. McGrath,* 339 U. S. 33 (1949) at p. 50. In the instant case, petitioner through his able counsel stipulated that the issue of applicable law was to be decided by the trial court; prepared and filed proposed findings of fact, and a brief in support of his position; prepared and filed a brief for reconsideration after receiving from the trial court a result which disappointed him; prepared and filed an extensive brief before the Third Circuit; and finally was afforded the opportunity to present, and in fact presented, oral argument before the Third Circuit. Surely, the

constitutional requirements of due process have been met in the instant case. Even counsel for the petitioner would agree that the Third Circuit is a "tribunal which meets at least the currently prevailing standards of impartiality". The mere fact it decided this case by a Judgment Order and not a full opinion does not violate due process or the "prevailing standards of impartiality."

Petitioner brought to respondent's attention the case of *Galvan v. Press,* 347 U. S. 522 (1953). In that case, Galvan urged that his deportation under Section 22 of the Internal Security Act of 1950 violated the Due Process Clause of the Fifth Amendment since it was applied to his having been a member of the Communist party from 1944-46. The Court rejected this argument specifically and in doing so said:

> "In light of the expansion of the concept of substantive due process as a limitation upon all powers of Congress, even the war power, see *Hamilton v. Kentucky Distilleries Co.,* 251 U. S. 146, 155, much could be said for the view, were we writing on a clean slate, that the Due Process Clause qualifies the scope of political discretion heretofore recognized as belonging to Congress in regulating the entry and deportation of aliens. And since the intrinsic consequences of deportation are so close to punishment for crime, it might fairly be said also that the *ex post facto* Clause, even though applicable only to punitive legislation, should be applied to deportation.
>
> "But the slate is not clean. As to the extent of the power of Congress under review, there is not merely 'a page of history,' *New York Trust Co. v. Eisner,* 256 U. S. 345, 349, but a whole volume. Policies pertaining to the entry of aliens and their right to remain here are peculiarly concerned with the political conduct of

government. In the enforcement of these policies, the Executive Branch of the Government must respect the procedural safeguards of due process. *The Japanese Immigrant Case,* 189 U. S. 86, 101; *Wong Yang Sung v. McGrath,* 339 U. S. 33, 49. But that the formulation of these policies is entrusted exclusively to Congress has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government."

Again, "the slate is not clean"; "whole volumes" have been written; and it is equally imbedded in the "judicial tissues of our body politic as any aspect of our government" that a court can regulate its own procedures. The entire rationale of disposition of petitions for certiorari underscores this point.

However, the Third Circuit did not merely dismiss petitioner's appeal. It gave "careful consideration" to the issues raised by petitioner, "particularly that the district court erred in its choice of law governing this action", and affirmed. The affirmance means the Third Circuit found no reversible error in the procedures, law, or application of the facts to the law in the district court's decision on the choice of law. In effect it agreed with and adopted the lower court's reasoning as set forth in the latter's opinion of January 18, 1972. (A2-3).

Petitioner's second argument on the due process issue is an alleged lack of prior notice (by publication) that cases would be disposed of without full opinions but rather by orders. Petitioner does not challenge the usage of Judgment Orders subsequent to the alleged first date of publication and thus accepts the fact and necessity of their usage thereafter.

This Court does not have the benefit of the Internal Operating Procedures cited by petitioner as having been

published in the *Legal Intelligencer* on April 8, 1974. However, it was there stated:

> "These IOP's implement: A. Statutory Mandates; B. Federal Rules of Appellate Procedure; C. Rules of the Court of Appeals for the Third Circuit; and D. Customs practices and traditions of this Court."

It then went on to explain when a Judgment Order would be used.

Petitioner states on page 14 of his Petition that "on or before January 18, 1974, the Third Circuit had not given public notice of the standards and criteria, if any, it utilized in deciding an appeal without a written opinion". This statement is untrue. One year and one day prior to January 18, 1974, the same *Legal Intelligencer* published the Third Circuit's "New Procedures" which pointed out that "no longer [would the court] prepare opinions for publication in all cases" and that "certain cases will be terminated by orders". The standards and criteria for full opinions versus orders was then specified. (A25-A26).

It is thus apparent petitioner has had all the safeguards of due process and even the notice provisions he alleges were not made. There is thus no reason for this Court to grant certiorari on this issue.

CONCLUSION.

The granting of a writ of certiorari is discretionary under Judiciary Act of 1925, 43 Stat. 936. That discretion should not be exercised by the Court in the instant case.

In the last analysis this petition for certiorari is made by a litigant who has been disappointed in the resolution of disputed facts below and their application to the law. As stated by Chief Justice Taft in *Magnum Co. v. Coty,* 262 U. S. 159, 163 (1923):

> "The jurisdiction (of the U. S. Supreme Court to review cases by way of certiorari) was not conferred upon this Court merely to give the defeated party in the Circuit Court of Appeals another hearing. Our experience shows that eighty percent of those who petition for certiorari do not appreciate these necessary limitations upon our issue of the writ."

Respectfully submitted,

WILLIAM E. RAPP,
Attorney for Respondent.

RAWLE & HENDERSON,
Of Counsel.

RESPONDENT'S APPENDIX.

(Letterhead of)

MORRIS M. SHUSTER
Attorney at Law and Proctor in Admiralty
1530 Western Saving Fund Bldg.
Broad and Chestnut Streets
Philadelphia, Pa. 19107

PE 5-3223
April 2, 1971

Honorable Donald W. Van Artsdalen
3058 U. S. Courthouse
9th & Chestnut Streets
Philadelphia, Pa. 19107

Re: *Anastassios Stamatakos*
Vs: *Hunter Shipping Co., S. A.*
Civil Action No. 68-1094

Dear Judge Van Artsdalen:

I am enclosing with this letter Plaintiff's Brief In Support Of Application Of United States Law.

Mr. Rapp joins with me in requesting that Your Honor postpone the filing of Pre-Trial Memoranda in this case until there has been a final determination of the choice of law issue.

Respectfully yours,

Morris M. Shuster

MMS:at
enc.
cc: William E. Rapp, Esquire w/enc.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA.

CIVIL ACTION NO. 68-1094.

ANASTASSIOS STAMATAKOS

v.

HUNTER SHIPPING CO., S. A.

PLAINTIFF'S BRIEF IN SUPPORT OF APPLICATION OF UNITED STATES LAW.

I. INTRODUCTION.

On September 7, 1966 plaintiff was seriously injured while employed as a seaman aboard the defendant's vessel, SS "Michael L" while it was berthed in Bayonne, New Jersey. Plaintiff claims that defendant is liable to him under United States statutory and non-statutory maritime law, which provides for the recovery of damages for injuries caused by the vessel's unseaworthiness and/or defendant's negligence as well as a recovery for maintenance and cure. The items of damage recoverable under United States maritime law include past and future loss of earning power, past and future medical expenses, past and future pain, suffering and inconvenience, and past and future loss of life's pleasures.

The resolution of plaintiff's action requires the Court to make a threshold decision on the choice of substantive law. It is plaintiff's position that the substantial relevant contacts in the action with the United States mandate the

application of United States maritime non-statutory and statutory law, the Jones Act, 46 U. S. C. A. Sec. 688.

• • •

Since September 9, 1968, plaintiff has been a permanent resident of the United States and intends to become a United States citizen. He has been employed in the United States as a dishwasher because his injuries prevent him from returning to work at sea. His earnings in the United States are substantially less than he could earn in the United States maritime industry. He has continued under the medical care of United States doctors since his return to the United States. Plaintiff's allegiance and domicile is thus now to the United States. Although he was a Greek citizen at the time of his accident, Greece no longer has an immediate concern for his well being as does the United States. "We extend to such an alien the same constitutional protections of due process that we accord citizens." *Hellenic Lines Ltd. v. Phoditis, supra,* S. Ct. 1734.

Since the United States does have an immediate concern for plaintiff's well being, even the dissenters in *Rhoditis, supra,* would extend the benefits of United States law to plaintiff. Justice Harlan's dissent stated, 90 S. Ct. 1736:

> "The only justification that I can see for extending extra-territorially, a remedial-type provision like Sec. 688 is that the injured seaman is an individual whose well-being is a concern of this country."

The other choice of law factors which result in contacts with Liberia, Panama, and Greece are inconsequential compared with the United States contacts. Moreover, the contact with Liberia, the law of the flag, adds further support to the application of United States law since Liberian law adopts the non-statutory general maritime

law of the United States. Title 22 of the Liberian Code of Laws of 1956, effective March 1, 1958, as amended April 23, 1964 and effective August 18, 1964, Section 30, provides:

> "Adoption of General American Maritime Law.—Insofar as it does not conflict with any other provisions of this Title, the nonstatutory general Maritime Law of the United States of America is hereby declared to be and is hereby adopted as the general Maritime Law of the Republic of Liberia."

The only contact with Panama is defendant's incorporation in that country. The insignificance of this factor is demonstrated by the anonymity of defendant's stockholders. Defendant's stock is made to bearer. In this action, the individual stockholders have yet to file an affidavit of ownership in which they identify themselves.[2]

The contact with Greece other than plaintiff's Greek citizenship at the time of the accident is Nereus Shipping, a Greek corporation, the vessel's "Operating Manager". Other than contacting with Triton Shipping Company, Inc. to act as agent for the vessel, the record is devoid of any other activity by Nereus on behalf of the vessel other than as a conduit between Triton and Hunter.

It is thus evident that the i[illegible]ertion of Nereus between Triton and Hunter was for the purpose of giving the vessel's operation a Greek facade.

In *Rhoditis, supra,* the Supreme Court refused to apply Greek law where there was more Greek contacts than here and held at 90 S. Ct. 1734-1735:

> "If . . . the liberal purposes of the Jones Act are to be effectuated the facade of the operation must be

2. An officer of defendant has taken an affidavit which states that based on information and belief that a named Greek citizen who resides in Great Britain owns defendant's stock. However, no affidavit from the alleged owner has been obtained and filed of record.

considered as minor, compared with the real nature of the operation and a cold objective look at the actual operational contacts that this ship and this owner have with the United States."

IV. CONCLUSION.

United States statutory and non-statutory maritime law govern this action because the substantial choice of law contacts are with the United States in that:

1. The SS "Michael L" and Hunter Shipping Company, S. A. are subject to United States law and the control of the Maritime Administration.

2. A United States bank extended credit to Hunter so that Hunter could acquire ownership of the vessel.

3. A United States company was appointed by Hunter to accept service of process on its behalf in the United States.

4. A United States company was the active agent for Hunter.

5. The charter agreements for the vessel were executed in the United States.

6. From January, 1963 to the time of plaintiff's accident, United States ports were regular ports of origin or termination of the vessel's voyages.

7. Payment for the vessel's services, Hunter's entire source of income, were made in the United States in United States currency.

8. Plaintiff's accident occurred in the United States.

9. Plaintiff was originally employed by Hunter in the United States.

10. Plaintiff is now and has been a permanent resident of the United States and intends to become a citizen of the United States.

The other choice of law factors which result in contacts with Liberia, Panama, and Greece are inconsequential compared with the United States contacts.

The defendant has reaped the benefits of United States law and United States commerce. Accordingly, it should be required to meet the obligations of the United States law. Moreover, the plaintiff is an individual whose well being is now the concern of the United States. He should be given those rights or recovery and damages provided by United States law.

Respectfully submitted,

Morris M. Shuster,
Attorney for Plaintiff.

FOR RELEASE JANUARY 17, 1973.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DEALS WITH DELAY.

The United States Court of Appeals for the Third Circuit reports that it has made substantial progress in dealing with the problem of delay in appeals of criminal cases and has now instituted an experimental system to reduce the delays in civil cases as well.

BACKGROUND. Since 1961, there has been a steady annual increase in case load. In 1961, there were 334 appeals filed; for the year ending June 30, 1972, the number rose to 1179, an increase of 253%. The current rate of increase in filings is approximately 7% a year. Over the past two years, the Court of Appeals has taken several steps to cope with the situation such as:

— Reducing or eliminating oral arguments.

— Increasing the number of sittings per judge.

— Increasing by 33⅓% the number of cases for disposition each argument week.

The result of these steps has been a progessive reduction in the mean average time for disposing of criminal cases, as follows:

— For cases docketed in Fiscal Year 1970—11.5 months

— For cases docketed in Fiscal Year 1971—9.5 months

— For cases docketed in Fiscal Year 1972—7 or 8 months (est.)

NEW PROCEDURES. To further reduce the aging of cases, the Court will soon increase the number listed for disposition each argument week by another 25%. Thus, the case lists will have been increased from 15 per week, which was the practice prior to September, 1971, to 25 per week, or an increase of 40%.

Also, to furnish the judges with necessary time to handle the increased case load, the Court of Appeals has accepted the recommendation of the Federal Judicial Center and the Advisory Judicial Appellate Council and has established new guidelines for the publication of opinions. The Court no longer will prepare opinions for publication in all cases. Under a new plan, certain cases will be terminated by orders which will be duly recorded in tables and indices in the Federal Reporter Series. There will be no publication of dispositions which are without general significance to the public, to the legal profession, or to the institutions of the law. Published opinions will be limited to those cases which establish a new rule of law, which alter or modify an existing rule, or involve a legal issue of continuing public interest, or which criticize existing law, or represent a significant new contribution to the legal literature through historical review or resolution of apparent conflict. Thus, traditional opinions will be written only in those cases having precedental or institutional value. The Court is confident that it will be able to handle the constantly increasing case load without undue delay to the litigants and, at the same time, carry on its important mission as an appellate court.

EXCERPT FROM APPELLANT'S BRIEF BEFORE THIRD CIRCUIT.

MISCELLANEOUS.

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F. R. C. P. 52(a)	8
Goodrich, Handbook on Conflict of Laws (4th Ed., 1964)	20
Jones Act:	
46 U. S. C. Sec. 688	10, 16, 22, 25
46 U. S. C. Sec. 688, 45 U. S. C. Sec. 55	10, 16, 22, 25
Liberian Code of Laws, Title 22:	
Sections 2, 356	35
Sections 30, 336	2, 17, 22, 23
Restatement 2nd Conflict of Laws, Section 187 Com. b. (1971)	21
28 U. S. C. Sec. 1291(a)(3)	3